

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,**

**PHILLIP D. HINEMAN,
Bar No. 011887**

Respondent.

PDJ 2023-9035

FINAL JUDGMENT AND ORDER

(State Bar Nos. 22-1941, 22-1971, 22-2585,
22-2596, 23-0041, 23-0130)

FILED MAY 10, 2023

The Presiding Disciplinary Judge having accepted the Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.,

IT IS ORDERED that Phillip D. Hineman, Bar No. 011887, is suspended from the practice of law in Arizona for three years, concurrent with and retroactive to his November 5, 2022, suspension in PDJ 2022-9024, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent participate in the State Bar's Fee Arbitration Program -- as set forth in the Agreement for Discipline by Consent -- should his former clients initiate fee arbitration proceedings.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,440.00 within 30 days. There are no costs or expenses incurred by the office of the Presiding Disciplinary Judge in these proceedings.

DATED this 10th day of May, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 10th day of May, 2023, to:

Craig D. Henley
LRO@staff.azbar.org

Geoffrey M. T. Sturr
gsturr@omlaw.com

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,**

**PHILLIP D. HINEMAN,
Bar No. 011887**

Respondent.

PDJ 2023-9035

**ORDER ACCEPTING AGREEMENT
FOR DISCIPLINE BY CONSENT**

[State Bar Nos. 22-1941, 22-1971, 22-2585,
22-2596, 23-0041, 23-0130]

FILED MAY 10, 2023

On May 3, 2023, the parties filed an Agreement for Discipline by Consent (“Agreement”) pursuant to Rule 57(a), Ariz. R. Sup. Ct. The State Bar of Arizona is represented in this matter by Senior Bar Counsel Craig D. Henley. Respondent Phillip D. Hineman is represented by Geoffrey M. T. Sturr. The Agreement resolves six bar charges for which no probable cause orders have issued.

Contingent on approval of the proposed form of discipline, Mr. Hineman has voluntarily waived his right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. As required by Rule 53(b)(3), Ariz. R. Sup. Ct., notice of the Agreement was sent to the complainants. The PDJ has not been provided with any objections.

The Agreement details a factual basis in support of Mr. Hineman’s conditional admissions and is incorporated by reference. *See* Rule 57(a)(4), Ariz. R. Sup. Ct. Mr. Hineman conditionally admits the following violations:

- SB22-1941: ER 1.3, ER 1.4, ER 1.5, ER 1.15(d), and ER 1.16(d)

- SB22-1971: ER 1.3, ER 1.4, ER 1.5, and ER 1.16(d)
- SB22-2585: ER 1.3, ER 1.4, ER 1.15(d), and ER 1.16(d)
- SB22-2596: ER 1.4
- SB23-0041: ER 1.2, ER 1.3, ER 1.4, ER 1.5, and ER 5.5
- SB23-0130: ER 1.3, ER 1.4, and ER 1.16(d)

As a sanction, the parties agree to a three-year suspension, concurrent with and retroactive to Mr. Hineman's November 5, 2022 suspension in PDJ 2022-9024. Mr. Hineman further agrees to pay costs and expenses incurred by the State Bar and to participate in fee arbitration if requested by two former clients.

The Agreement sets forth the factual background for Mr. Hineman's ethical violations, which is not repeated herein. Each of the six matters involves a failure to adequately communicate with clients, and all but one includes a lack of diligence in pursuing clients' cases. Mr. Hineman also failed to promptly provide refunds in some matters, send itemized statements required by his representation agreements, or provide clients and/or successor counsel with files and documents when his representation ended.

Sanctions imposed against lawyers "shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions*" ("ABA Standards"). Rule 58(k), Ariz. R. Sup. Ct. In determining the appropriate sanction, the PDJ considers

the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors.

The parties rely on ABA Standards 4.42, 7.2, and 4.12 - all of which call for suspension as the presumptive sanction. They agree that Mr. Hineman violated duties owed to his clients, the profession, and the legal system. They stipulate that he acted knowingly as to the violations of ER 1.2, ER 1.3, ER 1.4, ER 1.15(d), and ER 1.16(d). The Agreement states that he acted negligently as to the violations of ER 1.5 and ER 5.5. There was actual harm to the clients, the profession, and the legal system.

The parties stipulate to the existence of four aggravating factors: prior disciplinary offenses, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. Three mitigating factors are identified: personal or emotional problems, timely good faith effort to make restitution or to rectify consequences of misconduct, and full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

The Agreement states:

While Respondent has amassed a significant discipline history, this Consent Agreement represents the remaining pending bar charges against Respondent. During the adjudication of these remaining bar charges, Respondent has been cooperative with the discipline process by, among other things, attempting to eliminate all restitution issues by refunding the prepaid fees and agreeing to participate in the State Bar Fee Arbitration Program to resolve any fee disputes.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction[s] and will serve the purposes of lawyer discipline.

IT IS ORDERED accepting the Agreement for Discipline by Consent. A final judgment and order is separately filed this date.

DATED this 10th day of May, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
this 10th day of May, 2023, to:

Craig D. Henley
LRO@staff.azbar.org

Geoffrey M. T. Sturr
gsturr@omlaw.com

by: SHunt

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A
SUSPENDED MEMBER OF THE
STATE BAR OF ARIZONA,**

**PHILLIP D. HINEMAN
Bar No. 011887**

Respondent.

PDJ 2023 - 9035

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

State Bar File Nos. 22-1941, 22-1971,
22-2585, 22-2596, 23-0041, 23-0130

The State Bar of Arizona, and Respondent Phillip D. Hineman who is represented in this matter by counsel, Geoffrey M. T. Sturr, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.

A Probable Cause Order has not been entered in this matter.

Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the Complainant(s) by e-mail on March 31, 2023. Complainant(s) have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. To date, none of the Complainants have provided an objection to the agreement.

Respondent conditionally admits that his conduct, as set forth below, violated the following ethical rules:

SB22-1941: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 1.15(d) and 1.16(d).

SB22-1971: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5 and 1.16(d).

SB22-2585: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.15(d) and 1.16(d).

SB22-2596: Rule 42, Ariz. R. Sup. Ct., ERs 1.4.

SB23-0041: Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5, and 5.5.

SB23-0130: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4 and 1.16(d).

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: three-year suspension from the practice of law, concurrent with and retroactive to Respondent's November 5, 2022 suspension in *In re: Phillip D. Hineman*, PDJ 2022-9024 [SB 21-1731, 22-1321, 22-1468, 22-1506 and 22-1585].

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.¹

The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May 21, 1988.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

COUNT ONE (File No. 22-1941/Velasco)

2. On April 9, 2019, Velasco paid Respondent a \$2000.00 flat fee, earned upon receipt, to represent him in an anticipated bankruptcy case. The fee agreement states that the flat fees “include client paid costs (\$335.00 filing fee, \$15.00/for designated, court required credit counseling, and either \$38 (single filing) or \$68.00 (joint filing) for credit reports).” [*Typographical errors in original*].

3. The fee agreement also includes a mandatory fee arbitration provision as well as the refund language required by Rule 42, Ariz. R. Sup. Ct., ER 1.5(d)(3). The agreement affirmatively states that, in the event of early termination, “Attorney will provide a reconciliation of fees and costs incurred/earned in a reasonable period of time (see above section on reconciliation of representation fees).” [*Typographical errors in original*].

4. During the initial consultation on or about April 9, 2019, Velasco was purportedly told by Respondent’s assistant that the firm had to do a “deep credit report” and she would contact him once it was completed. While this was the last time that Velasco saw or spoke to Respondent directly, members of his staff communicated with Velasco after April 9, 2019.

5. In April 2019, Respondent sent Velasco a two-page letter and attachment generally explaining the bankruptcy requirements for the sale of non-exempt assets such as second vehicles or homes, jewelry or other valuables and the payment/purchase of items such as mortgage notes, life necessities and attorney's fees.

6. Velasco stopped communicating with his office at the end of July 2019, resumed communications in November 2019, and stopped communicating in December 2019. Velasco contacted Respondent's assistant in June of 2020. At that time, Respondent's assistant informed Velasco that he needed to provide additional payroll receipts, bank statements and tax records in order for them to file the bankruptcy.

7. Both Respondent and Velasco state that there was no communication between June 2020 and August 2020. Both blame the other for the lack of communication.

8. On August 6, 2020, Respondent e-mailed Velasco a letter informing him that he had not provided all of the required documents which was a violation of the fee agreement. The letter requested the five items and stated that Respondent

“look forward to filing your bankruptcy petition this month as this is the first step to discharge your debts and give you a fresh start.”

9. Velasco provided the requested documentation in October 2020 and again did not receive any further communication from Respondent until Respondent’s assistant contacted him in January of 2021.

10. Despite multiple attempts to contact Respondent or his staff, Velasco’s phone calls and attempted office visits were unsuccessful as the firm was frequently not open during business hours.

11. In or around June 2021, Velasco saw Respondent’s assistant as she was leaving the firm. The assistant asked Velasco to call Respondent next day.

12. Respondent’s assistant called Velasco the next day and explained that Respondent was ill and unable to handle the case. Velasco requested a refund of the \$2000.00 and was told that he would not receive much as the firm purportedly did substantial work on his case.

13. During the State Bar investigation, Respondent stated he believed the fee charged was reasonable but would refund the entire \$2,000.00 flat fee. He mailed a refund check to Velasco which Velasco negotiated.

COUNT TWO (File No. 22-1971/Vance)

14. In August 2021, Vance moved to Yuma, Arizona from Illinois with her daughter and stepson. Vance was separated from her husband, an active duty Army recruiter, who had been reassigned from Illinois to Utah.

15. On November 9, 2021, Vance paid Respondent \$4000.00 to initiate the Yuma County Superior Court case of *Natalie Vance v. Philip Jim Allen Vance*, DO2021-01168. Respondent waited to file the petition on November 24, 2021 in order to comply with residency requirements.

16. One of the primary issues in the case was Vance's interest in obtaining custody of Vance's stepson as her husband was stationed in Utah.

17. In November the parties agreed that the stepson could visit with his father in Utah, but Vance was later informed that her husband and stepson intended to remain in Utah.

18. In April 2022, husband checked himself into an alcohol rehabilitation unit and the stepson was left with husband's parents. Based on Vance's continued interest in obtaining third-party custody of the stepson, Respondent informed Vance that she would need to pay an additional \$2200.00 to pursue those claims.

19. Vance initially paid Respondent the additional \$2200.00 but decided not to pursue third-party custody shortly thereafter. Vance immediately informed Respondent of her decision and requested a refund of the \$2200.00.

20. Respondent told Vance he would issue a refund but did not do so until September 2022.

21. In June 2022, Vance relocated to Maricopa County.

22. During this time, Respondent suggested that they dismiss the Yuma lawsuit and refile in Maricopa County. Respondent also informed Vance that he may not be able to continue the representation due to unspecified personal problems.

23. According to Respondent's billing record, Respondent's last substantive action in the case was the preparation of documents regarding the third-party custody request and his subsequent attendance at a temporary orders hearing in early June 2022.

24. In or around July 2022, Vance requested a full accounting of the legal services and fees.

25. Respondent sent Vance the only invoice for the representation on or about July 7, 2022.

26. Vance immediately questioned the accuracy of the invoice and requested a copy of the client file.

27. When Respondent did not respond, Vance sent Respondent an additional e-mail on July 19, 2022 requesting a full refund and the client file.

28. Vance terminated the representation in August 2022 citing Respondent's failure to reasonably communicate with her, his failure to return the client file, his failure to properly address the fee dispute, and their disagreement on how to proceed in the lawsuit.

29. As part of an e-mail exchange on August 16, 2022, Respondent stated that he would file a Motion to Withdraw and refund Vance the entire \$6200.00.

30. Respondent filed the motion on August 16, 2022 and the court granted it on August 17, 2022.

31. On September 12, 2022, Respondent provided Vance with a cashier's check in the amount of \$6200.00 which Vance successfully cashed.

COUNT THREE (File No. 22-2585/Pearce)

32. According to Respondent's billing records sent to the State Bar, Respondent began billing Pearce for legal services related to the Yuma County

Superior Court case of *Joshua Brody Morales v. Amaryllis Pearce*, DO2021-00572 on September 17, 2021.

33. On October 25, 2021, Pearce paid Respondent \$4000.00 to represent her in the lawsuit. Pearce was previously pro per and had recently lost an order of protection and temporary orders hearing. A trial had also been previously set for May 19, 2022.

34. Pursuant to the terms of the fee agreement, Respondent agreed that “[a]n itemized statement for Attorney’s fees, costs and expenses will be sent to the Client regularly each month.” The fee agreement also contains a clause mandating that the parties arbitrate any fee disputes through the State Bar’s Fee Arbitration Program.

35. On November 2, 2021, Pearce provided certain documents related to the lawsuit.

36. On November 24, 2021, Pearce contacted Respondent’s assistant after not hearing from Respondent after her November 2nd submission. Pearce also provided Respondent’s assistant with additional documents.

37. On December 15, 2021, Respondent's assistant sent Pearce a letter generally requesting certain categories of documents in anticipation of preparing an initial disclosure statement.

38. On December 16, 2021, Respondent's office filed a Notice of Appearance and provided Pearce with a copy.

39. On December 23, 2021, Respondent's assistant e-mailed Pearce a copy of the transcript of the earlier OOP/temporary orders hearing.

40. On February 21, 2022, Respondent submitted his client's initial disclosure statement.

41. Having not received any of the monthly invoices required by the fee agreement, Pearce requested an accounting of the legal fees.

42. In response to Pearce's requests, Respondent purportedly requested that his assistant prepare an invoice for the legal services in February 2022.

43. Respondent and his office failed to provide the requested invoice.

44. A copy of the client file produced to the State Bar reflects a gap in communication between January 2022 and April 2022.

45. In his response to the State Bar investigation, Respondent states:

46. “Unbeknownst to me, but certainly something that I encourage all clients to do, was that (Pearce) and (opposing party) had been meeting and came to a resolution of the case in mid- to late- April 2022. I first found out about it from review of a settlement letter and parenting plan on April 27, 2022 from the opposing counsel.”

47. On April 27, 2022, the opposing counsel provided a settlement offer to Respondent’s office. The letter specifically excluded any child support obligations by either party pursuant to the parties’ oral agreement. Respondent’s assistant provided the offer to Pearce on April 29, 2022 and received confirmation that Pearce and the opposing party did not want any child support awarded.

48. On May 13, 2022, Respondent accepted most of the pertinent provisions of the April 27, 2022 offer, but including a provision requiring the opposing party to pay child support and provide certain financial disclosures. Respondent offered to prepare the child support worksheet once the financial documents were exchanged.

49. On May 17, 2022, Respondent prepared an electronic Stipulated Notice of Settlement and Request to Vacate the May 19, 2022 trial but it does not appear to have been filed with the court.

50. On May 18, 2022, Pearce requested the status of the May 19th trial. Respondent did not respond.

51. On May 19, 2022, Respondent filed a Final Stipulated Orders and Parenting Plan which contained the parties' agreement that neither party owed past or future child support.

52. Later that day, Respondent informed Pearce that the trial had been vacated and he would provide a copy of the final signed documents. Respondent did not provide a copy of the signed orders.

53. Pearce made several unsuccessful attempts to contact Respondent in order to receive the signed orders and an accounting of the legal fees.

54. According to Respondent's billing records, Respondent billed \$6027.49 in attorney's fees and costs between September 17, 2021 and May 19, 2022.

55. There were no court appearances and the only filings by Respondent were: a) the December 16th notice of appearance, b) a Notice dated December 29, 2021, and c) the May 19th Final Stipulated Orders and Parenting Plan.²

² The electronic May 17th 2022 Stipulated Notice of Settlement does not appear in the court record.

56. As part of his January 13, 2023 response to the State Bar, Respondent explains that he wrote off the balance after applying the initial \$4000.00 payment. The billing records reflect that the balance was written off on January 12, 2023.

57. Respondent also provided the State Bar with a complete copy of the client file.

COUNT FOUR (File No. 22-2596/Croteau)

58. On January 24, 2022, Respondent was hired to represent Croteau and her husband in the United States Bankruptcy Court case of *In re: Robert and Regina Croteau*, 0:22-bk-02856-BMW.

59. Contrary to Croteau's allegation that she paid Respondent the requested \$2265.00 fee for the Chapter 7 bankruptcy in late 2021, the fee was paid in February 2022. This was Croteau and her husband's fifth bankruptcy.

60. Due to delays caused in part by Croteau failing to timely provide the required paperwork, Respondent did not file the bankruptcy petition until May 5, 2022.

61. While Croteau alleges that the process was unnecessarily delayed, the bankruptcy docket does not reflect any unnecessary delays or extended period of delays.

62. Croteau also alleges that Respondent failed to inform her or her husband that Arizona does not require a certain reaffirmation regarding their loaned vehicle. Respondent denies the allegation and claims that he verbally explained the applicable Arizona law.

63. On September 9, 2022, the State Bar and Respondent filed an Agreement for Discipline by Consent in PDJ 2022-9024 [SB21-1731, 22-1321, 22-1468, 22-1506 and 22-1585] requiring Respondent to be suspended for two years, effective November 5, 2022.

64. On September 19, 2022, the court discharged Croteaus' debt.

65. Respondent was unable to file his motion to withdraw on November 5, 2022 as a result of computer difficulties, but was able to the next day.

COUNT FIVE (File No. 23-0041/Lucas)

66. On September 17, 2021, Lucas paid Respondent \$2000.00 for anticipated post-decree mediation or a modification of custody in the Yuma County Superior Court case of *Robert Paul Tennyson v. Jolin Cox*, DO2016-00971. The primary dispute related to an anticipated change in parenting due to husband's relocation out of state.

67. Pursuant to the terms of the fee agreement, Respondent agreed that “[a]n itemized statement for Attorney’s fees, costs and expenses will be sent to the Client regularly each month.” The fee agreement also contains a clause mandating that the parties arbitrate any fee disputes through the State Bar’s Fee Arbitration Program.

68. Consistent with Lucas’ allegations of communication failures, Respondent’s billing records reflect a complete lack of communication by Respondent or his staff between January 24, 2022 and March 14, 2022.

69. In or around August 2022, the opposing party requested the appointment of a court appointed advisor (CAA).

70. Respondent discussed with Lucas the pros and cons of the appointment. Croteau requested that Respondent object to the requested appointment.

71. Respondent believed, based on his discussions with Lucas, that the appointment of a CAA was warranted. Respondent therefore did not object to the appointment and the Court granted the unopposed request for the appointment of a CAA.

72. On September 9, 2022, the State Bar and Respondent filed an Agreement for Discipline by Consent in PDJ 2022-9024 [SB21-1731, 22-1321, 22-

1468, 22-1506 and 22-1585] requiring Respondent to be suspended for two years, effective November 5, 2022.

73. On November 17, 2022, Respondent filed an application to withdraw based on his suspension. The motion was granted on November 18, 2022.

74. Respondent failed to provide an itemized monthly accounting as required by Respondent's representation agreement.

75. In or around December 2022, Respondent sent Lucas an invoice charging Lucas \$11,595.45 in attorney's fees and costs between September 17, 2021 and November 29, 2022, leaving an outstanding balance of \$9595.45.

76. There were three hearings during the representation: a) On November 19, 2021, Respondent attended the only substantive hearing in the case; b) On April 6, 2022, Respondent attended a hearing which was continued; and c) On June 27, 2022, Respondent also attended a relatively brief hearing regarding the mode of travel and payment responsibilities related to custody transfers.

77. Respondent's billing records also reflects a \$35.00 charge for reviewing the minor's dental records on November 29, 2022 after Respondent's November 18th removal from the case.

78. In accordance with his fee agreement, Respondent indicates that he is amenable to participate in the State Bar's Fee Arbitration program to resolve the fee dispute.

COUNT SIX (File No. 23-0130/Callahan)

79. On September 10, 2021, Callahan hired Respondent to represent her in the Yuma County Superior Court case of *Tyler Amavisca Van Horn v. Juliann Lee Van Horn*, DO202000863 for modifications of a November 23, 2020 default decree for custody, child support, legal decision-making and parenting plan.

80. Callahan paid \$2500.00 for the representation and explained that she failed to participate in the earlier proceedings because her husband was abusive. Callahan also alleged that the husband was now unfairly using the decree against her and that he provided inaccurate financial information in calculating child support.

81. Pursuant to the terms of the fee agreement, Respondent agreed that "[a]n itemized statement for Attorney's fees, costs and expenses will be sent to the Client regularly each month." The fee agreement also contains a clause mandating that the parties arbitrate any fee disputes through the State Bar's Fee Arbitration Program.

82. Respondent alleges that he explained the one-year waiting period for requesting a modification to modifying the legal decision-making and parenting plan terms of a divorce decree. Respondent was authorized to file the requested modification on or after November 23, 2021.

83. While the initial follow up telephonic appointments were scheduled by Callahan with Respondent's staff, Respondent frequently cancelled them within minutes of the scheduled appointment time.

84. Respondent's billing records reflect no direct contact between Callahan and Respondent or his staff between September 22, 2021 and November 5, 2021 and again, with the exception of one e-mail from a staff member, between November 20, 2021 and December 21, 2021.

85. On January 4, 2022, Callahan e-mailed Respondent regarding the status of the case, having heard nothing from Respondent or his office. Respondent's assistant provided Callahan with an e-mail response that day.

86. The court docket and Respondent's billing records verify that no substantive action took place in the case until Respondent drafted and filed a Notice of Appearance and Motion for Mediation on January 7, 2022.

87. The court later ordered mediation to occur on February 14, 2022.

88. On February 8, 2022, the court set the matter for a status hearing for March 4, 2022.

89. On March 3, 2022, Callahan contacted Respondent before attending the March 4th resolution management conference.

90. On March 4, 2022, Respondent attended the resolution management hearing and contemporaneously filed a petition to modify legal decision-making, parenting time and child support, and a motion for temporary orders.

91. On March 30, 2022, the court held another resolution management hearing.

92. As alleged by Callahan and verified by Respondent's billing records, there was no direct contact between Callahan and Respondent or staff following the March 30th resolution hearing.

93. On April 21, 2022, the opposing party filed a response to the March 4th petition to modify.

94. On May 10, 2022, Callahan e-mailed Respondent stating that she made several unsuccessful attempts to contact his office and failed to receive notice of events in the case. Respondent disputed Callahan's complaints and suggested that they terminate the representation.

95. On May 15, 2022, the resolution management hearing was set for June 15, 2022.

96. On June 10, 2022, Respondent received a notice of substitution of counsel which was filed that day. Respondent was also asked to provide a copy of the client file to successor counsel. Respondent did not send successor counsel a copy of the client file.

97. In his response to the State Bar investigation, Respondent states that he mistakenly believed that he or his office provided the client file to successor counsel.

98. Respondent's billing records reflect \$5279.00 in billed attorney's fees and costs for the nine-month representation (five months after entering the lawsuit). After deducting Callahan's \$2500.00 payment of September 13, 2021, Callahan is shown to have a balance due and owing of \$2779.00. Respondent states that he has not sought and will not seek to recover from Callahan the \$2779.00 balance.

99. Respondent has indicated that he is willing to participate in the State Bar's fee arbitration program should Callahan contend the \$2500.00 fee she paid Respondent was not reasonable.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated the following ethical rules:

SB22-1941: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 1.15(d) and 1.16(d).

SB22-1971: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5 and 1.16(d).

SB22-2585: Rule 42, Ariz. R. Sup. Ct., ERs, 1.3, 1.4, 1.15(d) and 1.16(d).

SB22-2596: Rule 42, Ariz. R. Sup. Ct., ERs 1.4.

SB23-0041: Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5 and 5.5.

SB23-0130: Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4 and 1.16(d).

CONDITIONAL DISMISSALS

There are no conditional dismissals.

RESTITUTION

Pursuant to the terms of his fee agreement, Respondent agrees to participate in the State Bar's Fee Arbitration Program in SB23-0041 and 23-0130.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: a three-year suspension from the practice of law, concurrent with the retroactive effective date of Respondent's November 5, 2022 suspension in *In re: Phillip D. Hineman*, PDJ 2022-9024 [SB 21-1731, 22-1321, 22-1468, 22-1506 and 22-1585].

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standard 1.3, In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). The *Standards* provide guidance with respect to an appropriate sanction in this matter.

In determining an appropriate sanction, the Court considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Standard 3.0*.

The parties agree that the following *Standards* are appropriate given the facts and circumstances of this matter:

Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3 and 1.4, 1.16(d):

Standard 4.42

Suspension is generally appropriate when a lawyer: a) knowingly fails to perform services for a client or b) engages in a pattern of neglect and causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ERs 1.5 and 5.5

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system

Rule 42, Ariz. R. Sup. Ct., ER 1.15

Standard 4.12

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

The duty violated

Respondent's conduct violated his duty to the client, the profession and the legal system.

The lawyer's mental state

With respect to the violations of ERs 1.2, 1.3, 1.4, 1.15(d), and 1.16(d), Respondent acted knowingly. With respect to the violations of ERs 1.5 and 5.5, Respondent acted negligently.

The extent of the actual or potential injury

There was actual harm to the client, the profession and the legal system.

Aggravating and mitigating circumstances

The presumptive sanction is suspension and restitution. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

In aggravation:

a) 9.22(a) prior disciplinary offenses;

- PDJ 2022-9024 [SB21-1731, 22-1321, 22-1468, 22-1506 and 22-1585] (September 16, 2022): Respondent was suspended for two years and placed on two years of probation, if reinstated, for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5(b), 1.8(a), 1.15(d), 1.16(d), 3.3(a)(3), and 8.4(d).

- PDJ 2020-9104 [SB19-2355 & 20-0285] (April 23, 2021): Respondent was suspended for sixty days and placed on two years of probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5(b), 1.15(d), 1.16(d) and 5.3(b).
- PDJ 2016-9103 [SB16-0507 & 16-0704] (November 1, 2016): Respondent received a Reprimand with eighteen months of probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.4, 1.5(a), (b) & (d)(3), 1.7 and 3.2.
- SB14-3365: Respondent received an Admonition with probation for violating the Trust Account Rules.
- SB08-1585: Respondent received an Informal Reprimand with probation for violating Rule 42, Ariz. R. Sup. Ct., ER 1.15 and Rule 43.
- SB06-0823: Respondent received a Censure for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.1, 1.2, 1.3, 1.7, 1.14, 1.16, 3.1, 3.7, and 8.4(d).
- SB03-1581: Respondent received an Informal Reprimand for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.15(b) & (c).
- SB99-1374, 00-1054, 01-0033, 01-055: Respondent received a Censure with probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.5(a) & (b) and 1.8(a).
- SB96-3100, 98-0924, 98-0924, 98-1364: Respondent received a Censure with probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.1, 1.3, 1.4, 1.16(d), 3.2 and 8.4(d).

b) 9.22(c) a pattern of misconduct;

c) 9.22(d) multiple offenses; and

d) 9.22(i) substantial experience in the practice of law [May 21, 1988].

In mitigation:

- a) 9.32(c) personal or emotional problems (Respondent was diagnosed with Covid-19 in May 2022, as documented in a letter from his physician that has been provided to Bar Counsel), experienced significant symptoms that continued into the summer of 2022, and experienced the effects of Covid-19 thereafter.
- b) 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct; and
- c) 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction is appropriate. The parties conditionally agree that a greater or lesser sanction is not appropriate. This agreement is based on the following:

While Respondent has amassed a significant discipline history, this Consent Agreement represents the remaining pending bar charges against Respondent. During the adjudication of these remaining bar charges, Respondent has been

cooperative with the discipline process by, among other things, attempting to eliminate all restitution issues by refunding the prepaid fees and agreeing to participate in the State Bar Fee Arbitration Program to resolve any fee disputes.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. In re *Peasley*, 208 Ariz. 27 (2004). Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Suspension and the imposition of costs and expenses.

A proposed form of order is attached hereto as Exhibit B.

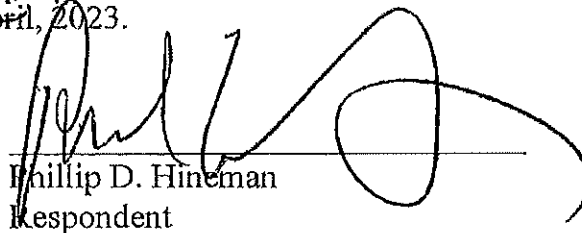
DATED this 3rd day of May 2023.

STATE BAR OF ARIZONA

/s/Craig D. Henley
Craig D. Henley
Senior Bar Counsel

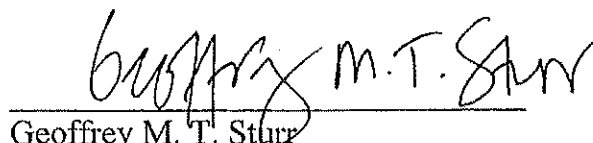
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 2nd day of May, 2023.


Phillip D. Hineman
Respondent

DATED this 2nd day of May, 2023.

Osborn Maledon PA


Geoffrey M. T. Sturr
Counsel for Respondent

Approved as to form and content

/s/ Maret Vessella

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of April, 2023.

Copy of the foregoing emailed
this 3rd day of May, 2023, to:

The Honorable Margaret H. Downie
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing emailed
this 3rd day of May, 2023, to:

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 3rd day of May, 2023, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: /s/Donato Zavala
CDH/dz

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Suspended Member of The State Bar of Arizona,
Phillip D. Hineman, Bar No. 011887, Respondent.

File No(s). 22-1941, 22-1971, 22-2585, 22-2596,
23-0041, and 23-0130

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

***General Administrative Expenses
for above-numbered proceedings***

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Additional Costs

Total for additional costs \$ 0.00

Total Costs and Expenses for each matter over 5 cases where a violation is admitted or proven.

1 x (20% x \$1,200.00): \$ 240.00

TOTAL COSTS AND EXPENSES INCURRED **\$1,440.00**

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A
SUSPENDED MEMBER OF THE
STATE BAR OF ARIZONA,**

**PHILLIP D. HINEMAN,
Bar No. 011887,**

PDJ

**FINAL JUDGMENT AND
ORDER**

State Bar File Nos. 22-1941, 22-1971,
22-2585, 22-2596, 23-0041, 23-0130

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement.

Accordingly:

IT IS ORDERED that Respondent, Phillip D. Hineman, is suspended from the practice of law for three-year suspension, concurrent and retroactive to Respondent's November 5, 2022 suspension in *In re: Phillip D. Hineman*, PDJ 2022-9024 [SB 21-1731, 22-1321, 22-1468, 22-1506 and 22-1585] for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective upon the date of this order.

IT IS FURTHER ORDERED that, if reinstated to the practice of law, Respondent shall be subject to any terms of probation imposed as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of May, 2023.

Margaret H. Downie, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of May, 2023.

Copies of the foregoing mailed/emailed
this _____ day of May, 2023, to:

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of May, 2023, to:

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of May, 2023 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by:_____